

JS 44 (Rev. 12/07) (cand rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

PATRICIA FORTLAGE

**DEFENDANTS**HELLER EHRMAN, LLP, a California partnership;  
and HELLER EHRMAN LONG-TERM DISABILITY PLAN.(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

Sonoma

(c) Attorney's (Firm Name, Address, and Telephone Number)

Geoffrey V. White  
Law Office of Geoffrey V. White  
351 California Street, Suite 1500  
San Francisco, CA 94104 (415) 362-5658

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
	<input type="checkbox"/> 370 Other Fraud	<input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 371 Truth in Lending	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 463 Habeas Corpus—Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>			
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting			
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment			
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations			
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare			
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities—Employment			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities—Other			
	<input type="checkbox"/> 440 Other Civil Rights			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**VI. CAUSE OF ACTION**

Brief description of cause: Damages and injunctive relief for denial of disability benefits under ERISA welfare plan, 29 U.S.C. Section 1132.

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

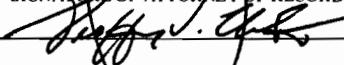
CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY** N/A

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE July 15, 2008

SIGNATURE OF ATTORNEY OF RECORD



**GEOFFREY V. WHITE (SBN. 068012)**  
**LAW OFFICE OF GEOFFREY V. WHITE**  
351 California St., Suite 1500  
San Francisco, California 94104  
Telephone: (415) 362-5658  
Facsimile: (415) 362-4115  
Email: gvwhite@sprynet.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**PATRICIA FORTLAGE,**

Plaintiff,

v.

**HELLER EHRMAN, LLP, a California  
partnership; and HELLER EHRMAN  
LONG-TERM DISABILITY PLAN,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR  
DISABILITY BENEFITS UNDER  
ERISA WELFARE PLAN**

Plaintiff, PATRICIA FORTLAGE, complains of Defendants, and each of them, and  
alleges as follows:

**JURISDICTION**

1. This is an action by a participant in an employee welfare benefit plan against the Plan and its named fiduciaries, for injunctive relief and damages to enforce her rights under the Plan to receive long-term disability income benefits, because Unum Life Insurance Co. of America ("Unum") has failed and refused to timely decide Plaintiff's appeal. Jurisdiction is conferred on this Court by Sections 502(e) and (f), 502(a)(1)(A) and (B), and 502(a)(2) and (3) of ERISA, 29 U.S.C. §§1132(e) and (f), 1132 (a)(1)(A) and (B), and 1132(a)(2) and (3), and by 29 U.S.C. §1331(a) and 28 U.S.C. §2201.

/////

1                                    **VENUE**

2            2.        The Defendant Heller Ehrman Long-Term Disability Plan ("Plan") is  
3 administered within this District. Defendant Heller Ehrman LLP ("Heller") has its principal  
4 place of business within this District, and Unum Life Insurance Co. of America ("Unum ") is  
5 doing business within this District. Venue is thus proper pursuant to Section 502(e)(2) of  
6 ERISA, 29 U.S.C. §1132(e)(2).

7                                    **PLAINTIFF**

8            3.        Plaintiff Patricia Fortlage ("Fortlage") is a natural person, and a resident of  
9 Petaluma, California. At all times material, she was an employee of Heller and a participant in  
10 the Defendant Plan, within the meaning of Section 3(7) of ERISA, 29 U.S.C. §1102(7).

11                                  **DEFENDANTS**

12           4.        Defendant Heller was and is a California law partnership, with its principal place  
13 of business in San Francisco, California. At all material times, Heller was and is the employer  
14 maintaining Defendant Plan, and is therefore a Plan "administrator", "fiduciary" and "party in  
15 interest", within the meaning of Sections 3(14), (16) and (21) of ERISA, 29 U.S.C. §§1002(14),  
16 (16) and (21).

17           5.        Defendant Plan was and is an employee welfare benefit plan, within the meaning  
18 of Section 3(1) of ERISA, 29 U.S.C. §1002(1). Plaintiff is informed and believes, and thereon  
19 alleges that at all material times the Plan was fully insured through premiums paid to Unum  
20 pursuant to that certain Group Policy No. 579445-001.

21           6.        Unum is, on information and belief, the party allegedly designated by the Plan  
22 and the above Policy to make determinations of disability and benefit payments under the Plan.  
23 Defendant Unum is allegedly a Plan "administrator", "fiduciary" and "party-in-interest", within  
24 the meaning of Sections 3(14), (16) and (21) of ERISA, 29 U.S.C. §§1002(14), (16) and (21).

25                                  **FACTS**

26           7.        Plaintiff Patricia Fortlage was employed by Heller from approximately December,  
27 2004 until approximately March 10, 2006, when she was required to leave work owing to her  
28 disability from Myasthenia Gravis and Neurocardiogenic Syncope. Plaintiff Fortlage had a



1 sudden, severe onset of her condition on February 23, 2006 and was taken to the Emergency  
 2 Room. She attempted to return to work for 2 weeks, but was unable to do so. She was taken off  
 3 work by her physician, and has not worked since that time. Plaintiff Fortlage began receiving  
 4 Social Security disability benefits in November, 2007.

5 8. In April, 2006, Plaintiff submitted her application for long-term disability benefits  
 6 to the Plan and its insurance carrier, Unum. Unum investigated Fortlage's claim for over one  
 7 year, paying benefits under a "reservation of rights" from June 12, 2006 through June 11, 2007.  
 8 By letter of August 22, 2007, Unum terminated benefits, contending in contradictory fashion that  
 9 Plaintiff's medical conditions were either pre-existing or not disabling. Plaintiff timely appealed,  
 10 and on April 15, 2008 and May 2, 2008 submitted extensive objective diagnostic, medical and  
 11 other evidence that she remained disabled and entitled to LTD benefits. To date, Unum has  
 12 failed and refused to respond to her appeal and continues to withhold her benefits.

13 **FIRST CLAIM**  
 14 [Claim for Disability Benefits]

15 9. Plaintiff incorporates by reference and realleges the allegations contained in  
 16 Paragraphs 1 through 8 above.

17 10. Defendants, and each of them, have failed to comply with their duties under  
 18 ERISA, the Policy, and applicable Plan documents to afford Plaintiff a timely, full and fair  
 19 review and determination of her claim for continued long-term disability benefits. Unum has  
 20 ignored Plaintiff's evidence supporting her continued disability. Unum's denial of benefits and  
 21 failure to respond to Plaintiff's appeal was biased and tainted by pecuniary conflict of interest,  
 22 since it would be required to pay the claim if granted. Accordingly, this Court may not defer to  
 23 Unum's decision, and exercises *de novo* review.

24 11. By their failure and refusal to pay Plaintiff's long-term disability benefits,  
 25 Defendants, and each of them, violated the terms of the Plan and Policy, and Plaintiff's rights to  
 26 such benefits pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B).

27 //

28 //

**SECOND CLAIM**  
[Breach of Fiduciary Duty]

12. Plaintiff incorporates by reference and realleges the allegations contained in Paragraphs 1 through 11, above.

13. As the alleged Plan fiduciary responsible for determining claims for benefits, Unum was required, pursuant to Part 4 of Title I of ERISA, to discharge its duties with respect to benefit claims prudently, for the exclusive benefit of Plan participants and beneficiaries, and in accordance with the specific fiduciary obligations imposed therein and under the Plan documents.

14. In its decision to terminate Plaintiff's LTD benefits, and its refusal to timely respond to her appeal, Unum acted arbitrarily and capriciously, in willful disregard of the terms of the Plan and Policy provisions, and the medical evidence submitted. At all material times, Unum acted herein only in its own financial interest in denying Plaintiff's claim. Accordingly, Unum has breached its fiduciary obligations under ERISA, the Plan and the subject Policy.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. On the First Claim: For an Order directing Defendants to pay to Plaintiff the long-term disability benefits to which she is entitled under the terms of the Plan, together with pre-judgment interest from the date such benefits should have been paid.

2. On the Second Claim: For an Order removing Defendant Unum as Plan fiduciary and barring it from any further responsibility for claims determinations under the Plan.

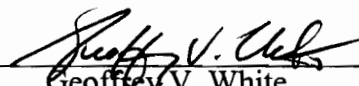
3. On all Claims:

a. For costs of suit herein, including reasonable attorneys' fees; and

b. For such other and further relief as the Court deems just and proper.

DATED: July 15, 2008

LAW OFFICE OF GEOFFREY V. WHITE

By   
Geoffrey V. White  
Attorneys for Plaintiff